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# After the Westmoreland Case: How Can the People Talk Back?

The long battle between Gen. Westmoreland and CBS is over. Despite all the fancy lawyer language, the first and nagging question is still "Who won?" The disturbing reality is that the serious question is, "Who lost?" And the haunting answer: "Just about everyone." Perhaps the bloodiest casualty is hard-hitting journalism, which remains under siege.

No matter how one reads the joint statements released Monday there is no way to construe the language as an apology by CBS. On the other hand, Mike Wallace's "I feel satisfied" and George Crile's "Delighted with the outcome" have the hollow ring of whistling past the graveyard. What is clear is that this suit had little to do with libel, and its resolution was never appropriate for a court of law. It was a controversy over sloppy journalism, and serious reporting may suffer the greatest penalty.

The documentary "The Uncounted Enemy: A Vietnam Deception" was flawed, and the process by which the program was assembled was unworthy of the serious journalism that has been the hallmark of CBS News. That's what the Benjamin Report, an internal investigation of the documentary procedures, clearly stated; it is what most professional journalists have concluded.

Yet whatever the program's journalistic flaws, it was not libel. As a public figure, Gen. Westmoreland would have had to establish malice—that is, that CBS knew that the central thrust of the documentary was false or had "reckless disregard" for its falsity and broadcast it anyway.

"The Uncounted Enemy" may have been even unfair, but that does not answer the rigorous test of libel. Crile admitted several serious journalistic sins—for example, hiring a consultant for \$25,000 and then using him as a central interviewee in the documentary. The payment was not mentioned in the program. Another ethical problem: after interviewing a former CIA agent, Crile decided to take him into the editing room to show him the original rushes of his interview and several others before interviewing him again. Such practices are unacceptable in any newsroom, broadcast or print.

It is no secret that others much closer to Westmoreland advised the general against a protracted, exorbitantly expensive lawsuit, but the hurt and angry soldier permitted himself to be manipulated, mostly by ultra-conservative media bashers who wished "to see the dismantling of a major news network," to quote Westmoreland's chief litigator. Now the litigation is over, and the victory that both sides claim Pyrrhic at best.

But the spoils of defeat are everywhere. Serious, probing documentaries on network television may already be an endangered species. The "chill," as it has come to be known from Westmoreland, Sharon and other cases, is ubiquitous. The crux of the problem is that there is still no fitting and reliable mechanism for those individuals, who rightly or wrongly consider themselves unfairly defamed, to have their day in the court of public opinion.

Thirty years ago, a psychologist told Eric Sevareid that "the Achilles' heel of television would come to be the viewers' inability to talk back to the black box." Alas, that is because access to your television set and, to an almost equal degree, news magazines, is so difficult to achieve. The problem is compounded by the fact that the journalists, who are the gatekeepers of the system, are constrained by limited and expensive air time and print space, and access to talk back is usually denied.

Edward R. Murrow understood that trap, and the night of the "See It Now" report on Sen. Joseph McCarthy in 1954, his opening was, "If the senator believes we have done violence to his

words or his pictures and desires to speak, to answer himself, an opportunity will be afforded him on this program." McCarthy accepted the offer. CBS News paid the senator's production costs, and within a month the junior senator from Wisconsin had his half-hour of rebuttal.

Through the years, there have been other attempts to enable those who feel "their ox has been gored" to answer back. In this case, CBS did eventually offer Gen. Westmoreland 15 minutes of air time, but that was when the threat of litigation loomed high on the horizon.

"60 Minutes" usually includes a brief, closing segment on "LETTERS," but these are mostly encapsulated retorts selected more for their entertainment value than any perceived need to answer back. The print news magazines virtually dismiss the opportunity of redress, except for the occasional letter from the irate or cheerleading reader. Those hardly qualify as substantively serious access. Some newspapers have done much better with the op-ed page; of course, they have more room. What emerges from the Westmoreland litigation is a crying, almost desperate plea, for access, particularly air time. The stark reality is that unless there is some imaginative, creative way of answering back, documentaries such as "Harvest of Shame" or "The Selling of the Pentagon" will disappear from the air. It is just that simple. An auspicious beginning would be the announcement that CBS is setting aside one half-hour, once a month for creative redress. It would be expensive but not compared with the cost of doing nothing.

This essay began with the questions "Who won?" and "Who lost?" in the Westmoreland/CBS lawsuit. The general wishes only to go back to South Carolina and be left alone, he says. CBS which, except for its gifted lawyer, claims victory, has perhaps been subjected to a very expensive journalism course by all the hoopla. When the exuberance and relief of the last few days simmers down, all that early testimony about questionable journalistic processes will emerge to plague all journalists. Neither television nor print publications are immune from the public perception that editors and producers—the gatekeepers—are insensitive, often arrogant, and unwilling to listen to serious viewers and readers who sometimes believe "they got it wrong."

The ultimate answer to all this exorbitant and often unnecessary litigation is going to be found in the newsrooms of America, not in its courtrooms. The genuine loser in all this litigation is the American public. The easy way out for the networks and their stations is to slow down, as they have already, and eventually to eliminate hard-hitting, investigative reporting. As attorney Floyd Abrams commented, "If news organizations let up a bit, no one would ever know it—newspapers, screens would still be filled with news. The sort of reporting that is libel-risky is the sort of material that serves the public in a unique way. If the press lets up, I'm afraid the public will never know what it has lost." That would be the ultimate tragedy for a democracy that is vitally dependent on a free flow of public information, the multitude of voices that James Madison envisioned 200 years ago.

It is a basic law of physics and journalism that to create a pressure-cooker climate without the safety valve is to ensure a destructive force inexorably destined to explode. Freedom of the press is a protection, a safety valve, for all citizens, not just those lucky enough or rich enough to control the levers of communication power.

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